Filed 5/23/19 In re J.R. CA1/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re J.R., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. J.R., Defendant and Appellant.	A155708 (Alameda County Super. Ct. No. JV-03014401)

Following a contested jurisdictional hearing, the juvenile court found appellant committed misdemeanor possession of ammunition by a minor. Appellant claims there was insufficient evidence to support his adjudication for possession of ammunition because he falls within an exception precluding conviction when a minor is accompanied by a parent or legal guardian. We conclude appellant does not come within this exception because he was *not* accompanied by a parent or guardian at the time police found him in possession of live ammunition.

I. FACTUAL AND PROCEDURAL BACKGROUND

A juvenile wardship petition (Welf. & Inst. Code, § 602, subd. (a)) was filed by the Alameda County District Attorney alleging appellant had committed making criminal

threats (Pen. Code,[1] § 422) and misdemeanor possession of ammunition by a minor (§ 29650).

The juvenile court held a contested jurisdictional hearing at which the following testimony was elicited.

J.M., who has known appellant since elementary school, was in a reading class on Monday at her high school when appellant came in late. The class was talking about a shooting in Florida. After appellant sat down, he and J.M. started taking about the shooting. During the conversation, appellant said he was "going to shoot up the school" with Sammy, another student in the class, on Thursday. Sammy said, "I wouldn't do nothing like that," and indicated appellant was joking. Appellant showed J.M. a list with the names of three targeted individuals. J.M. only saw the three names in a corner of a piece of folded paper. Appellant also showed J.M. a picture of a nun costume on his phone, stating he was going to wear it during the shooting. Even after appellant told J.M. she was on the list, she "knew it was a joke." In addition, J.M. saw a Web site or picture of a gun on appellant's phone. The conversation between them ceased once the teacher told them to be quiet.

The same day, J.M. talked to four people in her English class about the potential school shooting. Sammy also told his friends. After school, appellant asked J.M. why she was "telling everybody about it" and later that evening appellant sent a group text stating he "didn't want to get into serious legal stuff."

On Wednesday, the teacher in J.M.'s reading class, Ms. L., questioned J.M. concerning what was going on between her and appellant. J.M. told Ms. L. "about it." Believing the exchange between appellant and J.M. to be "very serious," Ms. L. contacted two other teachers. J.M. provided the other teachers with a shortened version of her conversation with appellant. The teachers contacted the police, and J.M. spoke with them, indicating she thought appellant was at first serious.

[1] All further statutory references are to the Penal Code unless otherwise indicated.

Attempting to locate appellant, police went to his home. After appellant's father answered the door, the officers asked for his son. Appellant "came down" and was detained and then handcuffed by the officers. As appellant was being handcuffed, he stated, "I was joking." He was immediately escorted to the rear of a patrol vehicle. Appellant's father told one of the officers that he did not own any weapons. With the consent of the father, the officers searched appellant's room for weapons because J.M. saw a photo or Web browser of a gun on appellant's phone. Appellant's father was present in the house during the search, "standing by the door."[2] While searching the room, an officer located a "live round" on a dresser. It was a .40-caliber bullet still containing the casing. It had not been fired.

In the patrol car an officer spoke with appellant regarding the bullet. Appellant stated he found it while either walking to school or from school to his house and decided to keep it.

During the hearing, appellant maintained he was merely joking, as well as being sarcastic. As for the bullet, appellant claimed he found it three or four years ago at school while he was waiting to be picked up. He also claimed his father gave him permission to keep it. Appellant thought it was "cool" to possess the bullet.

Appellant's father did not testify.

The court found insufficient evidence of criminal threats but sustained the petition as to the misdemeanor count of possession of ammunition by a minor.

Pursuant to Welfare and Institutions Code section 725, subdivision (a),[3] without declaring wardship, the court placed appellant on probation with various terms and conditions.

---

[2] It is unclear whether appellant's father was standing by the bedroom door or the front door during the search of appellant's room.

[3] Welfare and Institutions Code section 725, subdivision (a) provides in pertinent part, "If the court has found that the minor is a person described by Section 601 or 602, by reason of the commission of an offense other than any of the offenses set forth in Section 654.3, it may, without adjudging the minor a ward of the court, place the minor

II. DISCUSSION

Appellant asserts insufficient evidence supports the court's finding he committed possession of live ammunition in violation of section 29650. He claims he falls within an exception under section 29655, subdivision (b), which precludes conviction if a minor is "*accompanied by* a parent or legal guardian" at the time he or she possesses the ammunition. (Italics added.) We disagree because appellant was *not* accompanied by his father when he first came into possession of the live ammunition nor when police discovered the bullet in his room.

In reviewing a claim regarding the sufficiency of the evidence, the appellate court must determine whether after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. (*People v. Carter* (2005) 36 Cal.4th 1114, 1156.) The appellate court " ' " 'must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.' " ' " (*Ibid.*) The reviewing court " ' " ' "presume[s] in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." ' " ' " (*Ibid*.) The same standard applies in juvenile cases. (*In re Macidon* (1966) 240 Cal.App.2d 600, 607.)

Section 29650 states, "A minor shall not possess live ammunition." However, section 29655 provides that section 29650 shall not apply if one of three circumstances exist: "(a) The minor has written consent of a parent or legal guardian to posses live ammunition. [¶] (b) The minor is *accompanied by* a parent or legal guardian. [¶] (c) The minor is actively engaged in, or is going to or from, a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, the nature of which involves the use of a firearm." (Italics added.)

---

on probation under the supervision of the probation officer, for a period not to exceed six months."

Because section 29650 defines an offense in unconditional terms and section 29655 "then specifies an exception to [section 29650's] operation, the exception is an affirmative defense to be raised and proved by the defendant." (*In re Andre R.* (1984) 158 Cal.App.3d 336, 341.) It was therefore appellant's burden to prove he was accompanied by a parent. His argument rests upon the interpretation of "accompanied" as used in the statute. Accordingly, the issue here is one of statutory interpretation.

A trial court construction of a statute is purely a question of law, subject to de novo review on appeal. (*Unnamed Physician v. Board of Trustees* (2001) 93 Cal.App.4th 607, 619.) "The principles governing the proper construction of a statute are well established . . . . 'Courts must ascertain legislative intent so as to effectuate a law's purpose. [Citations.] "In the construction of a statute . . . the office of the judge is simply to ascertain and declare what is . . . contained therein, not to insert what has been omitted, or to omit what has been inserted; . . ." [Citation.] Legislative intent will be determined so far as possible from the language of statutes read as a whole, and if the words are reasonably free from ambiguity and uncertainty, the courts will look no further to ascertain its meaning. [Citation.] " 'The court should take into account matters such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy, and contemporaneous construction.' " [Citations.] "Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." ' " (*California Teachers Assn. v. Governing Bd. of Golden Valley Unified School Dist.* (2002) 98 Cal.App.4th 369, 375–376, italics omitted.)

The word "accompanied" is the past tense and past participle of the verb "accompany." The most common definition of "accompany" is "to go with as an associate or companion" (Merriam-Webster's Collegiate Dict. (11th ed. 2014) p. 8)—as in, "She accompanied me to the store." Other definitions include "to perform an accompaniment to or for" (*ibid.*)—as in, "He will be accompanying her on the piano," and "to cause to be in association <*accompanied* their advice with a warning>" or "to be in association with <the pictures that [accompany] the text>" (*ibid.*). Similarly, Black's

Law Dictionary defines "accompany" as "[t]o go along with (another); to attend. In automobile-accident cases, an unlicensed driver is not considered accompanied by a licensed driver unless the latter is close enough to supervise and help the former." (Black's Law Dict. (10th ed. 2014) p. 20.)

Here, appellant has failed to show he was accompanied by his father either when he came into possession of the live ammunition or when police discovered the bullet in his room on the dresser. First, the record does not show appellant's father was in appellant's physical presence when he initially found the bullet at school, three or four years earlier. Second, appellant has not demonstrated his father accompanied him at the time police searched his room and discovered the bullet on his dresser. Rather, while his father remained in the residence, appellant was handcuffed and taken to the rear of a patrol vehicle before his room was searched. On the other hand, if, for example, appellant and his father had been walking on a sidewalk when law enforcement detained them and discovered live ammunition on appellant's person, then in those circumstances, he would have come under the "accompanied by" exception.

Additionally, and notably, appellant did not produce his father to testify he gave him permission to keep the bullet or that he was even aware his son possessed it. In any event, under section 29655, subdivision (a), such consent is required to be in writing.

Appellant argues two of the dictionary definitions of "accompany," specifically "to go with as an associate or companion" and " 'to be in association with the pictures that accompany the text,' " "constitute the plain meaning of 'accompanied by' under section 29655," which appellant in turn summarizes as meaning " 'to go' or 'be with.' " Based on his interpretation of these definitions, appellant asserts he comes within the "accompanied by" exception since his father was "with" him when he possessed the bullet on the day of the offense. We reject appellant's overbroad definition of "accompanied by."[4]

[4] In support of his assertion "accompanied by" means "to be with," appellant relies on *In re Emiliano M.* (2002) 99 Cal.App.4th 304. However, that decision was automatically depublished under California Rule of Court, former rule 976(d), when the

Though both Merriam-Webster's Collegiate Dictionary and Black's Law Dictionary define "accompany" respectively to mean "to go with" or "[t]o go along with," neither includes "to *be* with" in its definition. Even assuming the definition of "accompany" means "to be with," as noted above, appellant's father was not with him when he first discovered and took possession of the bullet at school, nor was his father with him or in his presence when police located the bullet in his room on the dresser, as he had been handcuffed and seated in the back of a patrol car. In fact, no evidence was presented father ever knew about the bullet.

In the end, appellant has not shown he is entitled to the exception provided by section 29655, which permits a minor to possess live ammunition when accompanied by a parent.

III. DISPOSITION

Accordingly, the judgment is affirmed.

California Supreme Court granted review. Accordingly, appellant cannot rely on it. (Cal. Rules of Court, rule 8.1115(a).) The Supreme Court opinion, *In re Emiliano M.* (2003) 31 Cal.4th 510, did not discuss the meaning of "accompanied by."

_____
Margulies, Acting P. J.

We concur:

_____
Banke, J.

_____
Sanchez, J.

A155708
In re J.R.